

(1)

The Power

OF THE

LORDS and COMMONS

IN

PARLIAMENT

In point of

JUDICATURE

briefly discours'd.

At the Request of a Worthy Member of the House of Commons.

SIR,

TO give you a short an account of your Desires as I can; I must crave leave to lay you, as a Foundation, the *Frame* or *First Model* of this *State*. When, after the *Period* of the *Saxon Time*, *Harald* had advanc'd himself into the *Royal Seat*; the *Great* men, (to whom but lately he was no more than *Equal* either in *Fortune* or *Power*) disdaining this *Act* of *Arrogancy* and *Ambition*, called in *William Duke* of *Normandy*, (the most *Active Prince* of any in these *Western Parts*, and renowned for the *Victories* that he had successfully *Atchieved* against the *French King*, then the most *Potent Monarch* in *Europe*.)

This *Duke* led along with him to this work of *Glory* many of the *Younger Sons* of the best *Families* of *Normandy*, *Picardy* and *Flanders*; who, as *Voluntiers*, accompany'd the undertaking of this *Fortunate Man*.

The *Usurper* being *Slain*, and the *Crown*, by *War*, gained; to secure *Certain* to his *Posterity* what he had so *Suddenly* gotten, he shar'd out his *Purchase* retaining in Each *County* a *Portion*, to support the *Sovereign Dignity*, which was stiled *Dementia Regni*; (now the *Ancient Temeines*) and assigning to others his *Adventures* such *Proportions*, as engaged to himself the *Dependency* of their *Personal Service* (such *Lands* only excepted, as in *Free Alms*, were allotted to the *Church*) These were termed *Barones Regis* or the *Kings Immediate Free-holders*; for the word *Baro* imported then no more.

As the *King* to These, so These to their *Followers*, Subdivided part of their *Shares* into *Knights-Fees*, and their *Tenants* were called, *Barones Comitatus*, or the like; for we find, as in the *King's Writ*, so in *Theirs*, *Baronibus suis al Francoi & Anglois*, to their *Barons*, as well *French* as *English*; the *Royal Gifts*, for the most part, extending to whole *Counties* or *Hundreds*; an *Earl* being *Lord* of the *One*, and a *Baron* of the *Inferiour* *Donations* to *Lords* of *Townships* or *Mannours*.

And as the *Land*, so was also the *Course* of *Judicature* divided, even from the *Meanest* to the *Highest Portion*; each *Several* had his *Court of Law*, preserving still the *Custom* of our *Ancestors* the *Saxons*, who *jura per Pagos reddebant*, distributed *Justice* throughout each *Village*: And these were termed *Court Barons*, or the *Freeholders Court*, (twelve usually in number) who with the *Thame*, or *Chief Lord*, were *Judges*.

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The *Hundred-Court* was next, where the *Hundredus*, or *Aldermanus* (Lord of the *Hundred*) with the chief Lord of each *Township* within their Limits, judged. God's People observed *This Form*; in the Publick *Centurionis & Decan* *Judicabant Plebem omni tempore*. Hundreds and Decennaries administering Justice to the People at all times.

The *County-Court*, or *Generale Placitum*, was the next; *This* was to supply the Defect, or remedy the Corruption of the *Inferiour*: For *Ubi Curia Dominorum probantur defecisse, pertinet ad Vice Comitem Provinciarum*; where the *Hundred-Court* was found Defective, matters were referr'd to the Lord of the County. The Judges here were *Comites & Barones Comitatus, qui Libera, in hoc, Terras habeant*; Earls and Barons of the County, that were Free-holders in the same.

The last and Supreme Court, and proper to our Question; was *Generale Placitum apud London*, the *General Council* at London; *Universalis Synodus*, the *Universal Synod*, in Charters of the Conquerour, *Capitalis Curia*, the *Capital Court*; by *Glanvil*, *Magnum & Commune Concilium coram Rege, & Magnatibus suis*; the Great and Common Council before the King and his Nobles.

In the Rolls of *Henry the Third*, It is not Statute, but summon'd by Proclamation. *E-dicitur Generale Placitum apud London* (says the Book of *Abingdon*) whither *Duces, Principes, Satrapae, Rectores, & Causidici ex omni parte confluxerunt ad istam Curiam*, saith *Glanvil*, the *General Assembly* was called at London; whether Dukes, Princes, Peers, Rectors, and Lawyers resorted from all Quarters: And Causes were referr'd *propter aliquam dubitationem quae emergit in Comitatu cum Comitatus nescit dijudicare*; upon any Question or Difficulty which the County Court was not able to solve. Thus did *Ethelweld*, Bishop of *Winchester*, transfer his Suit against *Leofine* from the County *ad Generale Placitum*, or the *General Assembly*: In the time of King *Etheldred*, Queen *Edgine* against *Goda*, from the County appealed to King *Etheldred* at London, *Congregatis Principibus & Sapientibus Anglia*; where the Princes and Wise Men of the Land were met together. A Suit between the Bishops of *Winchester* and *Durham*, in the time of *S. Edward*, *Coram Episcopis & Principibus Regni in praesentia Regis ventilata & finita*; was handled and determined by the Bishops and Princes of the Realm in the presence of the King. In the 10th year of the Conquerour, *Episcopi, Comites & Barones Regni potestate adversis Provinciis, ad Universalem Synodum, pro causis audiendis & tractandis, convocati*; the Bishop, Earls and Barons of the Realm, &c. being assembled at the *Universal Council* to hear and determine Controversies, (says the Book of *Westminster*.) And *This* continued all along in the succeeding Kings Reign, until toward the end of *Henry the Third*.

AS this Great Court or Council, (consisting of the King and Barons) rul'd the important Affairs of State, and controlled all Inferiour Courts; so were there certain Officers, whose transcendant Power seem'd to be set for the circumscribing the Execution of the Princes will; as the Steward, Constable, and Marshal, fix'd upon Families in Fee, for many Ages. They (as Tribunes of the People, or Ephori among the *Lacedemonians*) growing by unmanly Courage terrible to Monarchy, fell at the feet and mercy of the King, when the daring Earl of *Leicester* was slain at *Evesham*.

This Chance, and the dear Experience *H. the Third* himself had made at the Parliament at *Oxford*, in the fortieth year of his Reign; together with the Memory of the many straits his Father was driven unto, especially at *Runny-Mead* near *Stanes*; brought this King to begin what his Successors fortunately finished; in lessening the Strength and Power of his Great Lords. And this was effected by searching into the Regality they had usurped over their peculiar Sovereigns, whereby they were found to be (as the Book of *St. Albans* termeth them) *quot Domini, tot Tyranni*, how many Lords, so many Tyrants; and by weakening that Influence and Sway which they carried in the Parliaments, by commanding the Service of many Knights, Citizens, and Burgesses, to the Great Council.

Now

Now began the frequent sending of *Writs* to the *Commons*; Their assent not only used in *Money*, *Charge*, and making *Laws*, (for, before, all *Ordinances* pass'd by the *King* and *Peers*) by their Consent also in *Judgments* of all Qualities whither *Civil* or *Criminal*. In proof whereof I will produce some few succeeding *Presidents* out of *Record*.

When *Adamor* (that proud *Prelate* of *Winchester*, the *Kings Half Brother*) had ag- Lib. 5. Al-
grieved the State by his formidable *Insolence*; he was banished by the joynt sentence of banf 1. 10.
the *King*, the *Lords*, and *Commons*. And this appeareth exprelly, by the *Letter* sent to 7. An. 44.
Pope Alexander the Fourth. who expostulated a *Revocation* of him from *Exile* because he H. 3.
was a *Church-man*, and so not Subject to any *Censure*: In *This* the answer is *Si Dominus*
Rex aut Majores Regni hoc vellent (meaning his *Revocation*) *Communitas tamen, Ipsius In-*
gressum in Angliam jam Nullatenus sustineret; though the *King* and *Lords* should consent
to his *Revocation*, yet would the *Commons* never allow of it. The *Peers* Subscribe this
Answer with their Names, and *Petrus de Mounford* vice *Totius Communitatis*, as *Speaker*,
or *Proctor* of the *Commons*.

For by that *Stile* *Sir John Tiptoft* (*Prolocutor*) affirmeth under his *Arms* the *Deed* of *Charta O-*
Enail of the *Crown* by *King Hen.* the fourth, in the eighth year of his *Reign*, for all rig. sub Si-
the *Commons*. gil. An.

The Banishment of the two *Spencers* in the fiftenth of *Edw. 2d.* *Prelates, Comites, &*
Barones, & les autres Peeres de la Terre, & Communes de Royalme, the *Prelates, Earls,*
and *Barons*, and the rest of the *Peers* of the *Realm*, and *Commons* of the *Land*, do
give Consent and Sentence to the *Revocation* and *Reversement* of the *Former Sentence*;
the *Lords* and *Commons* accord; and so it is express'd in the *Roll*.

In the first of *Edw.* the 3d. when *Elizabeth* the Widdow of *Sir John de Burgo*, com- Rot. parl.
plained in *Parliament*, that *Hugh Spencer* the Younger, *Robert Boldock*, and *William Cliffe*, 15. Ed. 3.
his *Instruments* had by *Duresse* forc'd her to make a *Writing* to the *King*, whereby she vol. 2.
was despoiled of all her *Inheritance*; Sentence is given for her in these words; *Pur ceo que*
avis est al Ruesques, Counts, & Barons, & autres Grandes, & a tout Cominalte de la Terre,
que le discript est fait contre Ley & tout manere de Raison, si faist le dit Escrip per agard
del Parliament dampue alloquens al liore a la dit Elixabeth, Forasmuch as it appeareth un-
to the *Bishops*, *Earls*, and *Barons*, and all the *Comonalty* of the *Land*, that the said
Writing was made against all *Law* and *Reason*, it is adjudged by *Parlea-*
ment, &c.

In *An 4 Ed. 3* it appeareth by a *Letter* to the *Pope* that to the *Sentence* given Prela. Par-
against the *Earl of Kent* the *Commons* were Parties as will as the *Lords* and *Peers* liam. 1. Ed.
for the *King* directed their *Proceedings* in these words *Comitibus Eagnatibus Baronibus* 3. Rot. 11.
& aliis de Communitate dicti Regni ad parliamentum illud congregatis injunximus ut super
his discernere & judicare quod Rationi & justicie conveniret habere præ Oculis solum
Deum qui eum concordæ unanimi sententia tanquam Reum criminis lœ sœ Majestatis mori adjudica-
rent ejus sententia &c We have commanded the *Earls* *Peers* *Barons* and others of the
Commonalty of the said *Realm* assembled in *Parliament* to determine in this matter
according to *Reason* and *Justice* having only *God* before their *Eyes*; and by an unanimous
consent they have sentenced him to death as guilty of *High Treason*

When in the 50th year of *Ed. 3.* the *Lords* had pronounc'd the *Sentence* against *Richard* Parl. An. 5.
Lions otherwise than the *Commons* agreed, they appealed to the *King*, and had *Re-* Edw. 3.
dress, and the *Sentence* entred to their *Desires*.

When, in the first Year of *Richard* the Second, *William Weston*, and *John Jennings*,

were

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were Arraigned in Parliament for surrendering certain *Forts* of the King's; the *Com-
mons* were *Parties* to the Sentence against them given, as appeareth by a *Memorandum* an-
nexed to that *Record*; In the first of *Hen.* the Fourth, although the *Commons* referre,
by *Protestation*, the pronouncing of the Sentence of *Deposition* against King *Richard* the
Second unto the *Lords*; yet are they equally Interessed in it; as appeareth by the *Record*.
For there are made *Proctors*, or *Commissioners*, for the whole *Parliament*, one *Bishop*, one
Abbot, one *Earl*, one *Baron*, and two *Knights* (*Gray* and *Erpingham*) for the *Commons*.
And to infer that because the *Lords* pronounc'd the Sentence, the point of *Judgment*
should be only *Theirs*, were as absur'd, as to conclude that no *Authority* was vested in
any other *Commissioner* of *Oyer* and *Terminer*, than in the Person of that Man only that
speaketh the Sentence.

In the 2d. of *Hen.* 5. The *Petition* of the *Commons* importeth no less than a *Right* they
had to *Act* and *Assent* to all things in *Parliament*; and so it is answer'd by the *King*. And
had not the *adjourned-Roll* of the *Higher-House* been left to the sole Entry of the *Clerk* of
the *Upper-House*, (who, either out of neglect to observe due *Form*, or on set purpose to
obscure the *Commons Right*, and to flatter the *Power* of those who he immediately served,
omitted them,) there would have been frequent *Examples* of all *Times* to clear this doubt,
and to preserve a just *Interest* to the *Common-Wealth*. And how conveniently it suits with
Monarchy to maintain This *Form*, lest others of that well-fram'd *Body* knit under one
Head, should swell too great and *Monstrous*, may be seen with half an Eye; it being (in
my *Opinion*) at least equally *Liable* to suffer a fresh under an *Aristocracy*, as a *Demo-
cracy*.

S I R,

I am

Your most humble Servant.

H. S.

F I N I S.